IN THE

Supreme Court of the United States

NO.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA,

Appellant,

vs.

THE FIRST NATIONAL BANK OF HOMESTEAD, HOMESTEAD, FLORIDA
and
OKALOOSA NATIONAL BANK AT NICEVILLE, NICEVILLE, FLORIDA

Appellees.

APPENDIX
OF APPELLANT

EARL FAIRCLOTH
ATTORNEY GENERAL

FRED M. BURNS
ASSISTANT ATTORNEY GENERAL

LARRY LEVY
ASSISTANT ATTORNEY GENERAL
THE CAPITOL
TALLAHASSEE, FLORIDA

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201.04 Tax on bills of sale, agreements, transfers, etc., of stock or shares in corporations and interests therein.—

(1) On all sales, agreements to sell or memoranda of legal title to shares, or certificates of stock or profits or interest in property or accumulations in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock interest rights or not, on each one hundred dollars of face value or fraction thereof the tax shall be fifteen cents; and where such shares are without par or face value the tax shall be fifteen cents on each one hundred dollars of actual value or fraction thereof but not to exceed fifteen cents on each share; provided, that in case of sale, where evidence of transfer is shown only by the books of the corporation, the stamps shall be placed upon such books of the corporation; and where the change of ownership is by transfer of the certificate, the stamps shall be placed upon the certificates; and in case of an agreement to sell or where the transfer is made by delivery of the certificate assigned in blank, there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale, to

which the stamp shall be affixed; and every bill or memorandum of sale or agreement to sell before mentioned, shall show the date thereof, the name of the seller, the amount of the sale, and the matter or things to which it refers. Any person or corporation liable to pay the tax as herein provided, or anyone who acts in the matter as agent or broker for such person or corporation, or who makes any such sale, or who in pursuance of any such sale, delivers any certificate or evidence of the sale of any stock, interest or right, or bill or memorandum thereof, as herein required, without having the proper stamps affixed thereto, with intent to evade the foregoing provisions, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished accordingly.

(2) For the purposes of this section, the term stock includes corporate stock, shares however designated in a joint stock company, trust in the nature of a common law trust or Massachusetts trust, association or other trust in which the trustees are associated together in substantially the same manner as directors in a corporation for the purpose of carrying on a business enterprise. Such shares are declared to be personal property, and not interests in land, notwithstanding the nature of the property of which the trust shall consist, unless provided otherwise in the trust instrument.

UNITED DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CIVIL ACTION NO. 1226

THE FIRST NATIONAL BANK OF HOMESTEAD, HOMESTEAD, FLORIDA
and
OKALOOSA NATIONAL BANK AT NICEVILLE, NICEVILLE, FLORIDA,

Plaintiffs,

vs.

FRED O. DICKINSON, JR., COMPTROLLER OF THE STATE OF FLORIDA
and
THE FLORIDA REVENUE COMMISSION
and
J. ED STRAUGHN, DIRECTOR OF REVENUE, STATE OF FLORIDA,

Defendants.

Upon plaintiffs' respective motions for summary final judgment the Court finds that plaintiffs, as national banking institutions, created and existing pursuant to 12 U.S.C.A. §§ 21 et seq., are instrumentalities of the United States and are therefore immune from state and local taxes which are not within the purview of 12 U.S.C.A. § 548, *First Agricultural National Bank of Berkshire County v. State Tax Commission*, 1968, ____ U.S. ____, ____ S. Ct.

____, ____ L. Ed 2d ____, (36 U.S.L.W. 4686, June 17, 1968).

It is therefore ORDERED that the defendants jointly and severally are restrained and enjoined from levying, assessing or collecting (a) sales and use taxes levied on goods, services and rentals purchased by plaintiffs, (b) intangible personal property taxes on mortgages owned and recorded by plaintiffs, (c) documentary stamp taxes on notes, mortgages, or other evidences of debt held by plaintiffs, and on shares of stock and capital debentures issued by plaintiffs.

This Court is neither required to nor should pass upon the question of whether the plaintiffs are entitled to have refunded to them the taxes which are alleged to have heretofore been paid by plaintiffs.

This cause is remanded to the District Court for such further disposition as may be appropriate.

/s/ David W. Dyer
UNITED STATES CIRCUIT JUDGE

/s/ G. Harrold Carswell
UNITED STATES DISTRICT JUDGE

/s/ Charles R. Scott
UNITED STATES DISTRICT JUDGE

CONSTITUTION OF THE STATE OF FLORIDA

ART. IX

SECTION 11. Income tax prohibited; inheritance tax; exemption for head of family.—No taxes upon inheritances or upon the income of residents or citizens of this State shall be levied by the State of Florida, or under its authority, and there shall be exempt from taxation to the head of the family residing in this State, household goods and personal effect to the value of Five Hundred ($500.00) Dollars, provided, however, that the Legislature may provide for the assessment, levying and collection of a tax upon Inheritances, or for the levying of Estate taxes, not exceeding in the aggregate the amounts which may by any law of the United States be allowed to be credited against or deducted from any similar tax upon Inheritances, or taxes on estates assessed or levied by the United States on the same subject, but the power of the Legislature to levy such Inheritance taxes, or Estate Taxes in this State, shall exist only so long as, and during the time, a similar tax is enforced by the United States against Florida Inheritances or Estates and shall only be exercised or enforced to the extent of absorbing the amount of any deduction or credit which may be permitted by the laws of the United States, now existing or hereafter enacted to be claimed by reason thereof, as a deduction or credit against such similar tax of the United States applicable to Florida Inheritances or Estates. The Legislature may provide for the appropriation of all taxes collected under this Article to such State, County, Municipal or Educational purposes as it may deem advisable.